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## RECENT DECISIONS

APPEAL AND ERROR—REVIEW—TRUTH OF EVIDENCE.—In an action in the trial court the trial judge improperly excluded certain evidence, and directed judgment for the plaintiff. The defendant appealed. *Held*, the evidence improperly excluded must be accepted as true for the purpose of review by the appellate court. *Illinois Central R. Co. v. Threefoot Bros. & Co.* (Miss.), 83 South. 635.

In reviewing the action of the court in directing a verdict, the reviewing court will assume the existence of every material fact which the evidence of the complaining party tends to prove. See *Northdruff v. City of Lincoln*, 66 Neb. 430, 96 N. W. 163; *Paxton v. State*, 59 Neb. 460, 81 N. W. 383. Therefore, in an action for personal injury, where a verdict was directed for the defendant, upon the question whether there was sufficient evidence that the defendant was negligent to go to the jury, the court held that for the purpose of inquiry the evidence must be construed in the light most favorable to the plaintiff. *Dunn v. Wilmington, etc., R. Co.*, 124 N. C. 252, 32 S. E. 711. So again, in determining whether there was error in directing a verdict for the defendant in an action for negligence, the appellate court will consider the evidence of the plaintiff alone, uncontradicted and unqualified by the evidence on the part of the defendant. See *Irwin v. Gulf, etc., R. Co.* (Tex. Civ. App.), 42 S. W. 661.

Where a party who is entitled to have a question of fact passed on by a jury moves the court to direct a verdict in his favor and the motion is sustained, he is, on appeal, not entitled to a settlement in his favor of the question of fact, and hence must rest on the proposition that he is entitled to a judgment, as a matter of law, on an interpretation of the evidence most favorable to the other party. *Rosenstein v. Traders' Ins. Co.*, 102 App. Div. 147, 92 N. Y. Supp. 326.

Where each party has requested the trial court to direct a verdict, all the facts and inferences necessary to support the judgment, and which could fairly have been derived from the proofs given, must, on appeal, be deemed to have been found in favor of the party for whom the verdict was directed, in the absence of a request by the other party to have any question submitted to the jury. *Davis v. True*, 89 App. Div. 319, 85 N. Y. Supp. 843. See also *Koehler v. Adler*, 78 N. Y. 287.

AUTOMOBILES—DUTY OF OWNER TO GUEST.—The plaintiff, while riding at the invitation of the defendant in the defendant's automobile, was injured in an accident. This action was brought for personal injuries. The trial judge charged the jury that the defendant was bound to use ordinary care in avoiding the accident. *Held*, the instruction is correct. *Roy v. Kirn* (Mich.), 175 N. W. 475.

The duty of the owner of a conveyance to his guest riding with him at his invitation is a question upon which the courts have only recently been called upon to pass. This is undoubtedly due to the advent and